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SYARIFAH NOORAFFYZZA WAN HOSEN v. DIRECTOR OF JABATAN AGAMA ISLAM SARAWAK & ORS

HIGH COURT SABAH & SARAWAK, KUCHING
RHODZARIAH BUJANG J
[JUDICIAL REVIEW NO: KCH-25-4-5-2014]
B 7 JANUARY 2015

ADMINISTRATIVE LAW: *Remedies – Mandamus – Application for – Renunciation of Islam – Grant of order of mandamus to compel authorities to issue of letter of release from Islam – Whether civil courts had jurisdiction to grant*
C *remedies related to renunciation of Islam*

CONSTITUTIONAL LAW: *Courts – Jurisdiction – Renunciation of Islam – Conversion to Christianity – Whether within exclusive jurisdiction of Syariah Court – Whether civil court could make order to grant remedies related to renunciation of Islam*
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The applicant, 32 years of age, was born and brought up as a Muslim. The applicant converted into the Christian faith and was baptised on 3 October 2009. She filed an application for *mandamus* to compel the first and/or second respondent to issue her with the letter of release from Islam and for
E the third respondent to change her given name to Vanessa Elizabeth and to drop Islam as the religion in her NRIC. At the first respondent's office, the applicant was informed, *inter alia*, to go to the Syariah Court and attend counselling sessions. The counselling sessions never materialised and efforts made for a list of criteria to be fulfilled in order to renounce Islam was
F equally futile. Hence, the applicant filed the present application for leave to file judicial review against the first, second and third respondents and for a declaration that she is a Christian. The issue that arose for determination, *inter alia*, was whether the civil court had the jurisdiction to grant remedies relating to the applicant's renouncement of Islam.

G **Held (dismissing application with no order as to cost):**

(1) The court did not have the jurisdiction to grant the remedies relating to the applicant's renouncement of the religion of her birth. The issue of whether a person is a Muslim or not falls within the exclusive jurisdiction of the Syariah Court because 'since matters on conversion
H to Islam come under the jurisdiction of the Syariah Court, by implication conversion out of Islam should also fall under the jurisdiction of the same courts'. The argument of the applicant that the Majlis Islam Sarawak Ordinance does not provide for renunciation of Islam, only conversion under ss. 68 and 69 thereof and therefore the
I applicant could seek recourse from the civil courts, could not be accepted. (paras 3, 5 & 6)

(2) Unless and until the applicant obtained the letter of release from Islam, the third respondent could not be compelled by *mandamus* to effect the change that the applicant wanted. The first respondent, in turn, could not be compelled to issue the letter of release as the court did not have the jurisdiction over matters of apostasy which was the sole province of the Syariah Courts. (para 9)

Case(s) referred to:

Hj Raimi Abdullah v. Siti Hasnah Vangarama Abdullah & Another Appeal [2014] 4 CLJ 253 FC ***(refd)***

Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan & Yang Lain [2007] 3 CLJ 557 FC ***(refd)***

Majlis Ugama Islam Pulau Pinang dan Seberang Perai v. Shaik Zolkaffily Shaik Natar & Ors [2003] 3 CLJ 289 FC ***(refd)***

QSR Brands Bhd v. Suruhanjaya Sekuriti & Anor [2006] 2 CLJ 532 CA ***(refd)***

Robert Linggi v. The Government of Malaysia [2011] 7 CLJ 373 HC ***(refd)***

Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor [1999] 2 CLJ 5 FC ***(refd)***

Tang Kwor Ham & Ors v. Pengurusan Danaharta Nasional Bhd & Ors [2006] 1 CLJ 927 CA ***(refd)***

Tuan Sarip Hamid & Anor v. Patco Malaysia Berhad [1995] 3 CLJ 627 SC ***(refd)***

Legislation referred to:

Federal Constitution, art. 121(1A)

Majlis Islam Sarawak Ordinance 2001, ss. 68, 69

For the plaintiff/applicant - Simon Siah; M/s Baru Bian & Co Advocs
For the 1st, 2nd & 4th respondents - Saferi Ali; State Counsel (Sarawak)
For the 3rd respondent - Mohd Taufik Mohd Yusoff; SFC

Reported by Sandra Gabriel

JUDGMENT

Rhodzariah Bujang J:

[1] The applicant, a Malay by race was born and brought up as a Muslim by her Muslim parents. She is about 32 years of age, going by her national registration identity card (NRIC) number in the cause papers and is, according to the same papers filed in court, a Christian convert, which new-found faith she embraced out of her own free will. What is more she has been baptised in the All Saints' Chapel, Tabuan Dayak Kuching on 3 October 2009. She has filed this application for *mandamus* to compel the first and/or second respondent to issue her with the letter of release from Islam, for the third respondent, the Director General of National Registration Malaysia to change her given name to Vanessa Elizabeth, to drop Islam as the religion in her NRIC and reflect her present faith in it.

[2] Her struggle to be recognised as a Christian started two years after her baptism when she first approached the National Registration Department Kuching and the Jabatan Agama Islam Sarawak in July and August 2011 for

A the change in name and status and for the letter of release, respectively. She was officially informed by letter by the National Registration Department to first obtain that letter of release. At the first respondent's office in Kuching she deposed that she met one Ustazah Hanisah Nahrawi who informed her that she has to go to the Syariah Court and attend counselling sessions, which
B sessions never materialised and her lawyer's effort made on her behalf, for a list of criteria to be fulfilled in order to renounce Islam was equally futile. She has therefore filed this application for leave to file judicial review against the said Government officers/departments for orders which I have mentioned earlier in addition to a principal prayer for a declaration that she
C is a Christian. Though the leave application was filed *ex parte* the same was heard *inter partes* and I am aided in this ruling by the diligent work of not just the applicant's counsel, Mr. Simon Siah but by both the officers from the State Attorney General's Chambers and the Federal Attorney General's Chambers, Mr Saferi Ali and Mr Mohd Taufik bin Mohd Yusoff respectively.

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[3] In order to succeed being granted the leave, I must be satisfied that the reliefs sought by the applicant merits consideration "on a full *inter parte* basis with all such evidence as is necessary on the facts and all such argument as is necessary on the law" but if there is "no arguable case" I must dismiss the
E application for leave (see *Tuan Sarip Hamid & Anor v. Patco Malaysia Berhad* [1995] 3 CLJ 627; [1995] 2 MLJ 442). When I read the applicant's affidavit it is clear to me that there is no arguable case for her in this case because I simply do not have the jurisdiction to grant the remedies relating to her renouncement of the religion of her birth.

F **Jurisdictional Issue**

[4] The Federal Courts have consistently spoken that apostasy is a matter within the jurisdiction of the Syariah Court. For reference I would list the cases as follows:

G (i) *Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 2 CLJ 5; [1999] 1 MLJ 489

(ii) *Majlis Ugama Islam Pulau Pinang dan Seberang Perai v. Shaik Zolkaffily Shaik Natar & Ors* [2003] 3 CLJ 289; [2003] 3 MLJ 705

(iii) *Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan & Yang Lain* [2007]
H 3 CLJ 557; [2007] 4 MLJ 585

(iv) *Hj Raimi Abdullah v. Siti Hasnah Vangarama Abdullah & Another Appeal* [2014] 4 CLJ 253; [2014] 3 MLJ 757

[5] The Federal Court in its latest decision in *Hj Raimi*'s case *(supra)* have
I decided, following that of *Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 2 CLJ 5 that the issue of

whether a person is a Muslim or not falls within the exclusive jurisdiction of the Syariah Court because "since matters on conversion to Islam come under the jurisdiction of the Syariah Court by implication conversion out of Islam should also fall under the jurisdiction of the same courts" (per Mohd Dzaiddin FCJ in *Soon Singh*'s case *(supra)*).

[6] The argument of the applicant that the Majlis Islam Sarawak Ordinance does not provide for renunciation of Islam; only conversion under s. 68 and s. 69 thereof and therefore the applicant can seek recourse from the civil courts, cannot in the face of the words underlined above be accepted as even the various State Enactments in Peninsular Malaysia mentioned in His Lordship's judgment also do not have a specific provision on the renouncement.

[7] Mr Saferi Ali has also cited in his written submission the recent decision of the Court of Appeal, delivered on 3 September 2014 applying also *Lina Joy*'s *ratio* wherein Noraini Soon Mohamed Ivan Soon, the appellant's appeal against the refusal of the National Registration Department to remove the religion of Islam from her identity card which she said was mistakenly stated as Islam given that both her and her mother were Buddists, was also dismissed. The position of the High Court in respect of the reliefs sought relating to apostasy made clear from the above quoted decisions is therefore not open to further debate, for as long as there is no inconsistent stand made by the same court. The Court of Appeal, twice, in the judgments of the same judge, Gopal Sri Ram JCA (as His Lordship then was) reiterated another position of the law relevant to this leave application which further buries it and that is that the court will refuse leave if it is a case where the subject matter of the review is one which by settled law either by written law or the common law is non-justiciable (see *QSR Brands Bhd v. Suruhanjaya Sekuriti & Anor* [2006] 2 CLJ 532 at p. 537 and *Tang Kwor Ham & Ors v. Pengurusan Danaharta Nasional Bhd & Ors* [2006] 1 CLJ 927 at p. 943). It is equally non-justiciable, if I may respectfully add, when the position of the law has been settled by case law, the principle of which I am bound by the doctrine of *stare decisis* to follow. Though I would not say that this leave application is frivolous for I do not think that in a matter as important as a person's faith and desire to follow it in his/her daily life can be considered as such, it is the non-justiciability of the subject matter which must guide my hands in making this decision.

[8] As for the argument of the applicant that art. 121(1A) of the Federal Constitution was made without the consent of the Yang Di-Pertua Negeri of Sabah and Sarawak, the same argument was taken up before David Wong Dak Wah J (as His Lordship then was) in *Robert Linggi v. The Government of Malaysia* [2011] 7 CLJ 373 and in a supplementary judgment appearing at

A p. 398 thereof, His Lordship has reproduced the letters of consent from the Yang Di-Pertua Negeri of both States which clearly show that such a concurrence was in fact obtained before the amendment to art. 121 was made and that includes the introduction of art. 121(1A). Coming as it were from the judgment of the court of not just competent jurisdiction but also from the
B same part of Malaysia, I have no doubt on the veracity of what is reproduced in that judgment.

[9] To conclude I would say this. Unless and until the applicant obtains her letter of release from Islam, the third respondent cannot be compelled by *mandamus* to effect the change that she wanted. The first respondent in
C turn cannot be compelled to issue the letter of release by me because I do not have the jurisdiction over matters of apostasy which is the sole province of the Syariah Courts as have been decided by the Federal Court cases I have listed above. In arriving at this decision I am fully aware of the guarantee on the freedom of religion in the Federal Constitution and that I had taken
D an oath of office to uphold its provisions. I have been reminded of the sanctity of the relevant provisions by the applicant's counsel but I believe I am not committing a sacrilege of that oath in this case because in the exercise of my duties I am also dictated by doctrines and conventions. The application for leave is therefore dismissed but with no order as to cost as
E graciously agreed by the respondents' counsels.

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